IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

The Oriental Insurance Co. Ltd. **Vs.** Chotu Lal & Ors.

D.B. Civil Special Appeal No. 24/1997
in
S.B. Civil Misc. Appeal No. 716/1994

Date of order :: July 5, 2007

PRESENT
HON'BLE MR.JUSTICE R.C. GANDHI.
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Tej Prakash Sharma for the appellant
Mr. Sandeep Saxena for the respondents

(ORAL, PER HON'BLE MR. GANDHI, J)

1. This appeal has been preferred against the order dated 20.08.1996 passed by the learned Single Judge in S.B. Civil Misc. Appeal No. 716/1994 arising out of the claim petition No. 29/1989, whereby the Motor Accidents Claims Tribunal, Baran (for short, 'MACT' hereinafter) passed an award of Rs. 70,000/- in favour of the claimants (to be referred as 'respondents' hereinafter) against the driver and owner of the vehicle in

question holding them vicariously liable. The insurer was absolved of its liability. The tractor No. RRO 4676 owned by respondent owner and driven by the driver caused accident on 29.04.1985 on Kota Shivpur Road near village Raniberod, wherein one Ram Charan died on the spot.

2. Aggrieved of the order of the MACT dated 13.04.1994, an appeal was preferred before the learned Single Judge on two grounds, i.e. (i) that the appellant driver was acquitted in the criminal case No. 101/1985 arising out of the same accident and (ii) that the driver of the vehicle was not having a valid licence, therefore, the company is absolved of the liability to pay compensation. The learned Single Judge while dealing with these points passed passed the order dated 20.08.1996 relying upon the judgment delivered by the Hon'ble Supreme Court in the case of *N.K.V. Brothers (P) Ltd. Vs. M. Karumal Anmal* (1980 ACT 435) and *Smt. Prem Kanwar Vs. R.S.R.T.C.* (1986 RLR 211) holding that the judgment in the criminal case will not defeat the claim of the claimants, therefore, the plea of the learned counsel for the respondents is of no avail. This finding of the learned Single Judge do not suffer from any illegality and is maintained.

3. So far as the question of valid licence of the driver is concerned, though this issue has been decided against the driver

respondent and in favour of the company, the learned Single Judge held that on this plea, claim of the appellants cannot be turned down and liability of the insurance company comes into play. The insurance company was held liable to indemnify the award and the award of the Tribunal was set aside to that extent.

4. The present appeal has been filed by the appellant insurance company on the same grounds as set out in the appeal before the learned Single Judge and particularly that the insurance company was not liable to indemnify the award as there is no privity of contract between the insurance company and the owner of the vehicle as the premium was not paid. This point has been dealt with by the learned Single Judge but the appellant is not satisfied and wants its reconsideration by this court.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the appellant has reiterated the plea as set out in the memo of appeal that the insurance company was not liable as the driver of the vehicle was not having a valid driving licence and that the premium for insurance of the vehicle was paid to the insurer on 14.06.1985 through bank guarantee though the cover note was issued on 27.03.1985. The contract of insurance came into existence on the date of receipt of the

premium. The accident took place on 29.04.1985, therefore, the insurance company was not liable to indemnify the award. The learned Single Judge considered the plea of the learned counsel for the appellant and observed as under :-

> "*The plea of the insurance company, respondent No. 5 that as the premium was paid by the Bank on 14.06.1985, though cover note, Ex. A 3, was issued on 27.3.1985 for a period from 27.3.1985 to 26.3.1986, it is not liable to pay compensation for the accident dated 29.4.1985 was not accepted by the learned Tribunal because the cover note was issued against the Bank guarantee and the insurer had accepted it. No appeal has been preferred by the respondent No. 5 against this finding of the learned Tribunal. There is no dispute that the cover note was issued on 27.3.1985 for the period from 27.3.1985 to 26.3.1986 against the Bank guarantee. NAW 2, Guru Darshan Singh has also admitted that the cover note is issued only after receiving the premium but when there is Bank guarantee, the cover note is issued provisionally. Rule 58 of the Insurance Rules, 1939, provides that if the entire amount of premium is guaranteed to be paid by the Bank, the risk in respect of the policy can be assumed by the Insurance Company. Since the cover note was issued against the Bank guarantee, the Insurance Company ought to have enforced the guarantee and recovered the premium. The lapse on the part of the Insurance Company, respondent No. 5, in this regard, would not entitle to it to repudiate the policy. The finding and reasons given by the*

learned Tribunal in this respect is legally correct.

The Insurance Company, respondent No. 5, is, therefore, liable to pay compensation to the extent of limit mentioned in the policy.

No other point has been argued and pressed before me.

The upshot of the entire discussion is that the order and the award of the learned Tribunal so far it relates to the dismissing of claim petition against Insurance Company is required to be set aside. The Insurance Company is also liable to pay compensation jointly and severally along with the appellants. Except this, I broadly agree with the findings and the conclusions of the learned Tribunal."

7. The vehicle was insured from 27.03.1985 to 26.03.1986, whereas the accident took place on 29.04.1985. The argument of the learned counsel for the appellant is that since the premium was received on 14.06.1985 after the occurrence of the accident, i.e. on 29.04.1985, therefore, there is no privity of contract between the insurance company and the owner. At the time of creating this contract, the cover note was issued against bank guarantee and insurance company has accepted it from 27.03.1985 and accordingly issued the cover note creating a liability of indemnification for the period the cover note was issued. The premium was paid on 27.03.1985 through Bank guarantee and it was the responsibility of the insurance company

to act upon the bank guarantee and receive the premium. Inaction in this regard on the part of the insurance company will not repudiate the contract which was entered into on 27.03.1985. Therefore, the accident has taken place within the currency of the cover note. The findings of the learned Single Judge to that extent are quite correct and do not deserve any interference.

8. However, in such cases where the licence held by the driver of the vehicle involved in the accident is held to be invalid or ineffective, the liability of the insurance company has been fastened in various judgments of the Hon'ble Apex Court. Dealing with a similar issue of law in the case title *National Insurance Co. Ltd. Vs. Swaran Singh & Ors.* reported in (2004) 3 SCC 297, the Hon'ble Supreme Court observed in para 108, as under :-

> "*108. Although, as noticed hereinabove, there are certain special leave petitions wherein the persons having the vehicles at the time when the accidents took place did not hold any licence at all, in the facts and circumstances of the case, we do not intend to set aside the said awards. Such awards may also be satisfied by the petitioners herein subject to their right to recover the same from the owners of the vehicles in the manner laid down therein. But this order may not be considered as a precedent.*"

The only relief to which the insurance company is entitled is that the right of recovery of the award amount, which could be granted. Since the claim against the insurance company was dismissed by the MACT, therefore, there was no occasion for the MACT to deal with the above aspect. The learned Single Judge has also not dealt with it. Therefore, we hold that the insurance company shall be liable to indemnify the award as held by the learned Single Judge and shall have the right to recover the same from the owner and driver of the vehicle.

9. The appeal is accordingly disposed of.

(Dr.VINEET KOTHARI),J. **(R.C. GANDHI),J.**

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